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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Workers' Compensation Commission
<b>Virginia Administrative Code (VAC) citation</b>	16 VAC 30 - 110
<b>Regulation title</b>	Procedures for Processing Awards
<b>Action title</b>	Awards Processing in Non-Disputed Cases
<b>Date this document prepared</b>	April 28, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

This is a promulgation of new regulations. It is designed to mirror the current systems of processing agreement forms relating to workers' compensation cases, but utilizing information systems technologies to allow this to be done in an automated and efficient manner computer-to-computer. The ultimate goal is to eliminate much of the confusing and burdensome paperwork currently required by the Commission, while retaining the outcomes being accomplished by those forms.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The Commission is an independent, non-executive branch agency, governed by three Commissioners elected by the General Assembly. Code § 65.2-200. The Commission is charged with carrying out the provisions of the Virginia Workers' Compensation Act, Code § 65.2-100 et seq. The Commission is authorized to promulgate rules and regulations. Code § 65.2-201. The Commission is authorized to collect specific accident data, as well as "such other information as may be required by the Commission" concerning injuries, and to regulate this activity. Code § 65.2-900. Any voluntary agreements as to compensation, falling outside the dispute resolution authority of the Commission, must be filed with the Commission, "in the form prescribed by the Commission." Code § 65.2-701.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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In Virginia, workers' compensation claims are processed largely in the same manner as any other jurisdiction: an employer acquires coverage, either through traditional insurance, through a group insurer or through self-insurance; an employee suffers an injury and reports the injury to his or her employer and carrier; the carrier, or an organization managing these losses on behalf of the carrier (often known as a "third party administrator"), investigates the claim; the claim is either denied or, if accepted, payments are made and treatment offered.

The Virginia Workers' Compensation Commission (the "Commission") has two primary functions in this process: (1) the Commission monitors coverage; and (2) the Commission monitors specific claims against that coverage. "Reporting" forms the basis of how the Commission performs these functions. Employers and their carriers report acquisition of and changes in coverage. Carriers report accident data and payment activity. These reports are then compared to what the law requires and processed accordingly. Disputes arise when parties disagree with each other, or with the results of the Commission's administrative operations, about what the law requires. The Commission then acts in its judicial capacity to resolve the dispute.

Approximately 200,000 workplace accidents occur in Virginia each year. Most of these do not result in more than limited medical treatment or in more than a day or so of time lost from work. Approximately 50,000 each year, however, result in more than \$1000 in treatment or more than 7 days of time lost from work, or both. Among these 50,000, it is estimated that in approximately 40,000 of the cases the employee has returned to work without residual medical impact from the injury within 4 to 6 weeks. The remaining 10,000 cases are scheduled for a more formal dispute resolution process; 5,000 of those scheduled result in a formal judicial opinion.

Under the Act any "agreement in regard to compensation or in compromise of a claim for compensation" must be submitted to the Commission for approval. Traditionally, the Commission has supplied

“agreement forms” to insurance adjusters, who undertake to reduce payment activity to these forms and collect signatures reflecting “agreement.” After execution, the forms are filed with the Commission, which enters “awards” reflecting the payment activity. If the activity has occurred in the past, an “award for record purposes” is entered; if the form reflects ongoing disability, and award for temporary disability benefits “until circumstances justify modification thereof” is entered.

Although difficult to measure with precision, research and analysis shows that a large percentage of “agreed upon” payment activity takes place prior to any forms being completed and executed. The evidence for this is somewhat anecdotal. First, the Commission’s awards processing unit frequently receives several forms, all at one time, on individual cases that reflect “agreement” to start, modify, and stop payments. Thus, although there might have been “agreement” for some time to make and accept payment, the Commission’s forms are not completed until all of the “agreeing” that has to occur has occurred. It is believed that this occurs largely to minimize processing headaches.

Another reason why agreement forms might be late in coming to the Commission is that employees simply resist executing forms submitted by insurance adjusters. Although the payments are indeed welcome, there are varying degrees of misunderstanding, mistrust, or both that operate to discourage compliance with the Commission’s requirements. Finally, agreement forms are delayed because the parties simply do not want them submitted. Although there is “agreement” to make and accept payment, the “consequences” of an award of ongoing benefits being entered are such that the process is delayed. There is little, if any, downside to an employee in having an award of ongoing benefits entered. There is potential downside to an insurance adjuster, however, in that suspension of the award in several types of cases has to be approved by the Commission to be effective.

The purpose of these regulations is to eliminate as much as possible the “paper” aspect of this agreed-upon payment activity. This activity is being reported to the Commission in an automated way; the regulations are intended to use these automated reports to generate awards, based upon the assumption that the vast majority of these result from agreement among the parties. If this assumption is incorrect in any particular case, these regulations would not apply and the Commission would provide as always dispute resolution services to its customers.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)*

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These regulations will set forth the manner in which information received through EDI may form the basis of a memorandum of agreement under §65.2-701 of the Code of Virginia, the manner in which parties may be deemed to have evidenced their consent to such agreement, and the manner in which the commission may enter, modify, or terminate awards based upon such agreements.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

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The primary advantages are reduced paper filings. The primary beneficiaries of these advantages are employers, or if insured their insurance carriers, which are required to produce such filings in workers' compensation cases. As an employer, the Commonwealth would also benefit from these changes. The action poses no disadvantages to the public or the Commonwealth.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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No applicable federal requirements.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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No localities particularly affected.

### Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Matthew Bryant, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, Virginia 23220, phone 804-367-2253, fax 877-366-5495, and email [matthew.bryant@vwc.state.va.us](mailto:matthew.bryant@vwc.state.va.us). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

## Economic impact

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	Projected cost to the Commission to implement and enforce: \$3,537,772 (from Commission's administrative fund) (this is within the cost to implement new EDI reporting procedures) Projected ongoing annual costs: no additional cost (the Commission's administrative fund is funded by a workers' compensation premium tax levied annually by the Commission on insurance carriers)
<b>Projected cost of the regulation on localities</b>	None perceived
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Employers, injured workers, insurance carriers, and individuals and businesses providing specialized services to these individuals and organizations relating to workers' compensation, such as attorneys and third-party administrators
<b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Approximately 200,000 accidents each year, with the same number of injured workers, a somewhat smaller number of employers, and approximately 400 insurance related organizations handle these accident. Many of these are small businesses.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	None perceived

## Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

Virginia considered continuing to collect agreement forms on paper, and then scanning the paper and indexing the content. Doing so would allow reporters to continue to send paper reports. This is burdensome to the Commission, difficult to perform with accuracy because of the volume of data elements collected, and it is not aligned with the industry EDI reporting methods. It also makes retains the burden of collecting physical signatures. It was determined that a system utilizing the data already being collected through electronic means would result in the least burdensome action, especially on small business.

### Regulatory flexibility analysis

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

Compliance will result in a less-burdensome process for submitting forms; thus, delaying promulgation would prolong having to comply with paper-form submission procedures. The action simplifies reporting requirements at minimal impact on operations. The Act requires such reporting, without exception.

### Public comment

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

Commenter	Comment	Agency response
Third-Party Administrator Compliance Representative	What are awards?	<p><b>Changes to the Awards Process for VWC Carriers</b></p> <p>The VWC Commissioners approved regulations to be proposed that represent a major change to the Commission's Awards Process. These anticipated changes will result in significant improvements, especially reducing the need to capture and manage paper signatures.</p> <p><b>What This Means for VWC's Carriers</b></p> <p>Because the new EDI system will automate major portions of the approval process, in the majority of cases Carriers will no longer be required to capture or manage paper signatures for Non-Disputed claims. See the next section for an overview of these changes.</p> <p><b>Summary of Changes</b></p> <ul style="list-style-type: none"> <li>For Non-Disputed Claims where a claimant's payment is suspended within the same quarter the claim is opened, Carriers are <b>no</b></li> </ul>

		<p><b><i>longer required</i></b> to capture or manage paper signatures. Awards for “record purposes” will be entered, and they will be required to object if they disagree with the record award.</p> <ul style="list-style-type: none"> <li>• For Non-Disputed Claims which span beyond the quarter when they were filed, Carriers are <b><i>no longer required</i></b> to capture employee signatures; however, they will be required to provide their own assent to awards for continuing benefits.</li> <li>• For Disputed Claims, Carrier responsibilities for capturing and managing signatures are largely reduced.</li> </ul> <p><b>How to Learn More About These Changes</b></p> <p>In late April, VWC will host a conference call to share details about changes to the Awards Process, and to answer Carrier questions. Look for information in next week’s communication about the date and time for the conference call, and for how to register.</p> <p>While the conference call will serve as the forum for you to pose specific questions, should you have general questions or comments in the meantime, please submit those via the TAP Feedback e-mail box. <a href="mailto:tapfeedback@vwc.state.va.us">tapfeedback@vwc.state.va.us</a></p>
Attorney practicing before Commission	Is there a plan to hold public hearings?	Yes
Attorney practicing before Commission	Will the proposed regulations be available for review?	Yes—link provided to working draft posted on website
Third-Party Administrator Claims Representative	Will I be able to provide comment after the text of regulations is proposed?	Yes

**Public comment period still open at time of completion of this form. Will update upon closure on May 14, 2008.**

### Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and*



one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

None.

### Detail of changes

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart: NA

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

The new provisions are based upon the receipt of injury and payment data through EDI. This is required on all workplace injuries. It is also required by law that for all voluntary agreements, the agreement be reduced to writing according to the form prescribed by the Commission and filed.

Through EDI, the Commission will learn of accidents, and of payments being made to an injured worker because of the accident. The Commission will take the information, and notify the parties that an award will be entered, based on the information, if not objected to within a specified time. The result of the award is the same as if the parties had submitted agreement forms required by law.

If the award is for an ongoing flow of benefits, the Commission will request that each party positively respond that the award should be entered. This is the most precise mirroring of current paper-form processing.

If an award of ongoing benefits is agreed to be suspended, for example because of a return to work, the provisions allow the EDI report to serve as the basis of a notice from the Commission that the benefits should be suspended.

These regulations apply to non-disputed cases only, where the basic compensability of an injury and agreement to pay benefits are not at issue. It encourages voluntary payment, with minimal intervention by the Commission. The Commission continues to provide formal and informal dispute resolution services.